

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAILED  
MAY 1 - 2007

FCC FORM NO. 1

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. <u>99-200</u>
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of	)	
1996	)	
	)	
Telephone Number Portability	)	CC Docket No. 95- 16

#### FOURTH ORDER ON RECONSIDERATION

**Adopted: April 19, 2007**

**Released: April 26, 2007**

By the Commission:

#### I. INTRODUCTION

1. In this Fourth Order on Reconsideration, we address requests for reconsideration of the Commission's *Numbering Resource Optimization* Third Report and Order and Second Order on Reconsideration (*NRO Third Report and Order*).<sup>1</sup> Specifically, we dismiss the petitions filed by Cingular Wireless (Cingular), j2 Global Communications (j2 Global), and Web Link Wireless (Web Link) requesting reconsideration of the Commission's service-specific and technology-specific overlay (collectively, specialized overlays or SOs)<sup>2</sup> requirements for the reasons set forth below?

<sup>1</sup> *Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Order On Reconsideration, 17 FCC Rcd 252 (2001) (*NRO Third Report and Order*).

<sup>2</sup> See *NRO Third Report and Order*, 17 FCC Rcd at 282, paras. 67-69. For convenience, we refer to both service-specific and technology-specific overlays collectively as specialized overlays or SOs. In a service-specific overlay, numbering resources are assigned to carriers that provide a particular type of service or services, such as unified messaging and/or vehicle response (e.g., OnStar) services. In a technology-specific overlay numbering resources are assigned to carriers that use a particular type of technology or technologies, such as wireless. In both cases, the service providers subject to the SO would not be assigned numbers in the underlying Numbering Plan Area (NPA).

<sup>3</sup> Cingular Wireless, LLC's Petition for Reconsideration, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 14, 2002) (Cingular Petition); j2 Global Communications, Inc.'s Petition for Reconsideration, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 14, 2002) (j2 Global Petition); Web Link Wireless, Inc.'s Petition for Reconsideration, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 14, 2002) (Web Link Petition). Petitions for reconsideration were also filed by AT&T Corp. (AT&T), John Staurulakis, Inc. (JSI), New York State Telecommunications Association, Inc. (NYSTA), and SBC Communications (SBC), regarding the Commission's local number portability (LNP) and thousands-block number pooling requirements. See AT&T Corp.'s Petition for Reconsideration of Numbering Resource Optimization Third Order on Reconsideration, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed May 6, 2002); John Staurulakis, Inc.'s Petition for Reconsideration, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 11, 2002);

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## II. BACKGROUND

2. *Specialized Overlays or SOs.* In the *Local Competition Second Report and Order*, the Commission sought, in part, to ensure fair and impartial access to numbering resources in order to encourage a competitive telecommunications market in the United States.<sup>4</sup> Specifically, the Commission implemented a ban against SOs, finding that SOs are unreasonably discriminatory against affected service providers and unduly inhibit competition? In light of the increased urgency of the numbering crisis, however, in the *NRO NPRM*, the Commission reexamined the policies set forth in the *Local Competition Second Report and Order* regarding SOs, and considered whether to modify or lift the restriction on SOs.<sup>6</sup> In the *NRO NPRM* the Commission sought comment on methods for implementing SOs without raising the competitive concerns that were cited in the *Local Competition Second Report and Order.*<sup>7</sup> The Commission also sought comment on whether it should consider exceptions to the prohibition on a case-by-case basis and whether state commissions should have authority to implement SOs applying federal guidelines?

3. Subsequently, in December 2001, continuing its efforts to maximize the efficiency with which numbering resources in the North American Numbering Plan (NANP) are utilized, the Commission released the *NRO Third Report and Order*.<sup>8</sup> In the *NRO Third Report and Order*, the

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New York State Telecommunications Association, Inc.'s Petition for Partial Reconsideration, for Partial Stay, and in the Alternative for Partial Waiver, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 13, 2002); SBC Communications, Inc.'s Petition for Clarification, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 14, 2002). We do not address these petitions herein. The issues raised by AT&T, JSI, and SBC were addressed by the Commission in prior orders. See *Numbering Resource Optimization*, CC Docket No. 99-200, Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking, 18 FCC Rcd 12472, 12481-83, paras. 22-27 (2003); *Numbering Resource Optimization*, CC Docket 99-200, Order, 17 FCC Rcd 7347, 7348-49, para. 5 (2002); *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8443-49, paras. 172-87 (1996). NYSTA withdrew its petition on March 14, 2002. See New York State Telecommunications Association, Inc., Request to Withdraw Petition for Partial Reconsideration, for Partial Stay, and, in the Alternative, for Partial Waiver, *Numbering Resource Optimization*, CC Docket No. 99-200 (filed Mar. 14, 2002); *Numbering Resource Optimization*, CC Docket No. 99-200, Order, 17 FCC Rcd 10904, 10904-05, para. 3 (2002).

<sup>4</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19508, para. 261 (1996) (*Local Competition Second Report and Order*).

<sup>5</sup> *Id.* at 19518, para. 285. In reaching this decision, the Commission relied on principles set forth in the *Ameritech Order*, where the Commission rejected a wireless-only overlay plan for the 708 NPA proposed by Ameritech-Illinois after determining that the plan was an unjust and unreasonable practice in violation of sections 201(b) and 202(a) of the Communications Act of 1934, as amended (the Act). See *id.* at 19516-17, para. 281 (citing *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596, 4604, para. 18 (1995) (*Ameritech Order*)). 47 U.S.C. §§ 201(b), 202(a).

<sup>6</sup> See *Numbering Resource Optimization*, CC Docket No. 99-200, Notice of Proposed Rulemaking, 14 FCC Rcd 10322, 10431, para. 257 (1999) (*NRO NPRM*).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 10432, para. 261

<sup>9</sup> *NRO Third Report and Order*, 17 FCC Rcd at 254, para. 1.

Commission considered the potential adverse impacts of SOs on service providers and customers.<sup>10</sup> Specifically, the Commission recognized that, in some instances, SOs may place affected providers at a competitive disadvantage.<sup>11</sup> The Commission, however, also recognized the potential benefits associated with SO implementation.<sup>12</sup> The Commission found that SOs may significantly contribute to numbering resource optimization by prolonging the life of the underlying area code, thereby easing the cost and inconvenience of frequent area code relief.<sup>13</sup> Further, the Commission determined that SOs are beneficial to customers by facilitating the preservation of geographic identity for wireline customers in a particular area.<sup>14</sup> The Commission concluded that the benefits associated with SOs may, in some circumstances, outweigh their potential discriminatory effects, particularly if the harm is mitigated.<sup>15</sup> The Commission, therefore, decided to lift the previously imposed ban on SOs and allow state commissions seeking to implement SOs to request delegated authority from the Commission to do so.<sup>16</sup> The Commission considers such requests for delegated authority on a case-by-case basis.<sup>17</sup>

4. In order to minimize the potential discriminatory effects associated with SOs, the Commission set forth criteria which are designed to provide guidance to states on what types of SO proposals would likely merit approval.<sup>18</sup> As a threshold matter, the state must address why the proposed SO would be superior to an all-services overlay.<sup>19</sup> State commissions must also address: (1) the technologies or services to be included in the SO; (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs;<sup>20</sup> (6) whether

<sup>10</sup> *Id.* at 282-91, paras. 67-87.

<sup>11</sup> *Id.* at 287, para. 78.

<sup>12</sup> *Id.* at 287, para. 77.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 285, para. 72.

<sup>16</sup> *Id.* at 282, para. 67.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 288, para. 81.

<sup>19</sup> *Id.*

<sup>20</sup> *See id.* at 291, para. 88. When an SO is implemented in a particular area, customers in the underlying area code may be required to give up their existing phone numbers; and, if so, are assigned a new number from the SO area code. This process is commonly referred to as a "take-back" because a service provider essentially takes back the customer's existing number and provides the customer with a new number consistent with the SO. In the *NRO Third Report and Order*, the Commission acknowledged that take-backs may result in cost and inconvenience to affected service providers because they require certain providers to reprogram their equipment and change their customers' phone numbers. *Id.* The Commission, however, recognized that take-backs may enhance numbering resource optimization by freeing up numbers in the underlying area code, thereby increasing the life of the underlying NPA and preserving geographic identity. *Id.* at 292, para. 89. The Commission also recognized that there are instances where the benefits of take-backs outweigh the potential harm, if the harm is mitigated. *Id.* Accordingly, in the *NRO Third Report and Order*, the Commission declined to impose a blanket prohibition against

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there will be ten-digit dialing in the SO and the underlying area code(s); (7) whether the SO and underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place? The state commission's application will only **be** granted after proper consideration of the feasibility of the SO and a determination that the SO will assist in the Commission's numbering resource optimization efforts.<sup>22</sup>

**5. Standard for Granting Petitions for Reconsideration.** The Commission will entertain a petition for reconsideration if it is based on new evidence, changed circumstances or if reconsideration is in the public interest.<sup>23</sup> The Commission, however, does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented." This is particularly true, where a petitioner advances arguments that the Commission previously considered and rejected in prior orders?

6. Cingular,j2 Global, and Web Link filed petitions seeking reconsideration of the Commission's decision in the NRO *Third Report and Order* to lift the ban on SOs, and requesting that the Commission prohibit take-backs in the context of SOs.<sup>26</sup> In this Fourth Order on Reconsideration, we address the petitions for reconsideration filed in response to the NRO *Third Report and Order*.

### III. DISCUSSION

7. As we explain below, we dismiss as repetitious the petitions for reconsideration filed by Cingular,j2 Global, and Web Link because their arguments were fully considered and addressed in the

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take-backs, and instead, developed guidelines to ensure that the negative effects associated with take-backs will be mitigated by the benefits in the particular area. *Id.* at 292, para. 90. Specifically, the state commission must show that: (1) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure; (2) the state will provide incentives for providers and their customers to relinquish their numbers in the underlying area code; and (3) a phased-in approach will help ease the cost burden on customers and service providers. *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See id.*

<sup>23</sup> 47 C.F.R. § 1.429(b) ("A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances: (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned the facts in question prior to such opportunity; or (3) The Commission determines that consideration of the facts relied on is required in the public interest.").

<sup>24</sup> *See* 41 C.F.R. § 1.429(i) ("The Commission may grant the petition for reconsideration in whole or in part or may deny the petition...Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, a second petition for reconsideration may be dismissed by the staff as repetitious.").

<sup>25</sup> *See Amendment to Pan 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Third Order On Reconsideration of the Report and Order and Memorandum Opinion and Order, 17 FCC Rcd 8520,8525, para. 15 (2002).

<sup>26</sup> *See* Cingular Petition; j2 Global Petition; Web Link Petition.

*NRO Third Report and Order*.<sup>27</sup> Accordingly, we affirm the Commission's decisions regarding SOs in the *NRO Third Report and Order*.<sup>28</sup>

8. The petitioners argue that a blanket prohibition on SOs should be reinstated because SOs have discriminatory effects against service providers.<sup>29</sup> Specifically, the petitioners argue that SOs place affected carriers at a competitive disadvantage because SOs exclude these carriers from the underlying area code and segregate these carriers into a separate area code." Additionally, the petitioners contend that the Commission's decision to lift the ban on SOs was arbitrary.<sup>31</sup> Certain petitioners also argue that a blanket prohibition on take-backs in the context of SOs should be implemented because take-backs result in discrimination against affected carriers by placing them at a competitive disadvantage.<sup>32</sup>

9. The Commission has previously addressed the petitioners' arguments in the *NRO Third Report and Order*.<sup>33</sup> Despite the potential discriminatory effects asserted by petitioners, the Commission no longer believes that placing certain technologies and services in a separate overlay is necessarily unreasonably discriminatory, particularly if the potential harmful effects are mitigated and numbering resource optimization benefits are achieved.<sup>34</sup> The potential harmful effects associated with SOs can be mitigated, in some instances, by implementing an SO that is, for example, transitional in nature, that avoids take backs, and that covers a sufficiently large geographic area such that the demand for numbers is substantial.<sup>35</sup> Additionally, the Commission's reasoning for lifting the ban on SOs was fully explained in the *NRO Third Report and Order*.<sup>36</sup> The Commission decided to lift the ban on SOs due to changed circumstances since the *Local Competition Second Report and Order*, such as the continued exigent number shortages, and the proliferation of new telecommunications services that do not require numbering resources from the underlying NPA.<sup>37</sup> The Commission concluded that, given these changed circumstances, the Commission should examine all viable options, including SOs, which may provide some form of relief to the numbering resource shortage.<sup>38</sup>

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<sup>27</sup> See *NRO Third Report and Order*, 17 FCC Rcd at 282-92, paras. 67-90

<sup>28</sup> *Id.*

<sup>29</sup> See Cingular Petition at 2-8; j2 Global Petition at 10-15

<sup>30</sup> See Cingular Petition at 2-8; j2 Global Petition at 10-15

<sup>31</sup> See Cingular Petition at 2-8; j2 Global Petition at 10-15

<sup>32</sup> See Web Link Petition at 7

<sup>33</sup> See *NRO Third Report and Order*, 17 FCC Rcd at 282-92, paras. 67-90

<sup>34</sup> *Id.* at 285, para. 73

<sup>35</sup> *Id.* at 285, para. 74. These examples are illustrative and not dispositive of any pending petition, since each proposed SO must be examined and evaluated on a case-by-case basis. *Id.*

<sup>36</sup> *Id.* at 285, paras. 72-74

<sup>37</sup> See *id.* at 285, para. 72; *Local Competition Second Report and Order*, 11 FCC Rcd at 195 18, para 285. Examples of new telecommunications services that do not require numbering resources from the underlying NPA include services provided to support Automated Teller Machines (ATMs) and On-Star.

<sup>38</sup> *NRO Third Report and Order*, 17 FCC Rcd at 285, para. 73

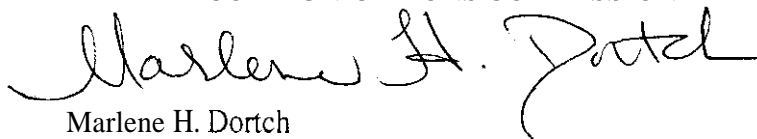
10. Further, we reject petitioners' assertions that take-backs should be eliminated. As noted above, in the *NRO Third Report and Order*, the Commission acknowledged that take-backs may result in cost and inconvenience to affected service providers because they require providers to reprogram their equipment and change their customers' phone numbers.<sup>39</sup> Due to the potential numbering resource optimization benefits associated with take-backs, however, the Commission declined to impose a blanket prohibition against their use.<sup>40</sup> Instead, the Commission allows states to use take-backs under circumstances designed to mitigate their potential harmful effects?

11. Therefore, consistent with the Commission's decision in the *NRO Third Report and Order*, the Commission dismisses the petitioners' requests to reinstate the ban on SOs and to implement a ban on take-backs.<sup>42</sup> The Commission does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented.<sup>43</sup> The Commission has considered the potential adverse impacts of SOs on service providers and customers, and the appropriateness of take-backs in the *NRO Third Report and Order*.<sup>44</sup> The petitioners have failed to assert any new evidence or changed circumstances regarding the adverse effects of SOs and take-backs, in the context of SOs, which indicate that the Commission's implementation of SOs and take-backs in accordance with the Commission's guidance would be unreasonable.<sup>45</sup> It is therefore unnecessary for the Commission to re-visit **this** issue. Accordingly, we dismiss Cingular's, j2 Global's, and Web Link's petitions for reconsideration.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS SO ORDERED** that, pursuant to the authority contained in sections 4(i) 257, 303(b), 303(g), 303(h), 303(q), 303(r), 309(j) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 257, 303(b), 303(g), 303(h), 303(q), 303(r), 309(j) and 332(a) and Section 1.429 of our rules, 47 C.F.R. § 1.429, the petitions for reconsideration filed by Cingular Wireless LLC, j2 Global Communications, and Web Link Wireless, Inc., ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>39</sup> See *supra* para. 4, note 20.

<sup>40</sup> See *NRO Third Report and Order*, 17 FCC Rcd at 292, para. 90.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.* at 282-92, paras. 67-89.

<sup>43</sup> 47 C.F.R. § 1.429(i).

<sup>44</sup> See *NRO Third Report and Order*, 17 FCC Rcd at 282-92, paras. 67-90.

<sup>45</sup> 47 C.F.R. § 1.429(b)